



Office of the Attorney General

State of Texas

February 2, 1993

DAN MORALES

ATTORNEY GENERAL

Mr. William D. Dugat III
Bickerstaff, Heath & Smiley, L.L.P.
San Jacinto Center, Suite 1800
98 San Jacinto Boulevard
Austin, Texas 78701-4039

OR93-047

Dear Mr. Dugat:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17768.

The Barton Springs/Edwards Aquifer Conservation District (the "district") has received a request for certain documents prepared for or on behalf of the district by the law firm of Bickerstaff, Heath & Smiley. Specifically, the requestor seeks "backup" material supporting certain items on the agenda for the district's October 15, 1992, meeting,¹ as well as "reports" prepared by the law firm relating to:

1. Spending of ratepayer/District money on Parking Tickets
2. The "Tramex Travel Letter matter"
3. Dual office holding
4. Open Meetings Act etc.

First of all, you advise us that the law firm has not prepared any reports that are responsive to item 4. The Open Records Act does not require a governmental body to make available nonexistent information. Open Records Decision No. 362 (1983). Concerning the remaining requests for information, you have submitted to us for review legal research memorandums that the law firm prepared relating to items 1 and 2 and a legal opinion letter relating to item 3. You claim that sections 3(a)(7) and 3(a)(11) of the Open Records Act except from required public disclosure some of the attorney fee bills and the legal research memorandums and legal opinion letter in their entirety.

Section 3(a)(7) excepts from required public disclosure:

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules

¹Through subsequent communication with the requestor, you have established that "back-up" material denotes the attorney fee bills that you submitted for our review.

and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure. (Footnote omitted.)

Attorney-client communications, however, may be withheld only to the extent that such communications document confidences of governmental representatives or reveal the attorney's legal opinion and advice. Open Records Decision No. 574 at 3; *see also* Open Records Decision No. 589 (1991) (addressing attorney fee bills). Section 3(a)(7) does not except records of calls made, meetings attended, or memos sent, unless release of such information would reveal legal advice or client confidences. *Id.*

We have examined the documents submitted to us for review. We conclude that the attorney's legal opinion and advice revealed in the legal memorandums and legal opinion letter are not severable from factual information contained therein. Accordingly, the district may withhold these documents in their entirety under section 3(a)(7) of the Open Records Act. The excised portions of the attorney fee bill also reveal client confidences.² Accordingly, the district may withhold the excised portions of the attorney fee bill under section 3(a)(7) of the Open Records Act. The district must release the remaining information, however. As we resolve this matter under section 3(a)(7) of the Open Records Act, we need not address the applicability of section 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-047.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GCK/mc

Ref.: ID# 17768

cc: Mr. W. B. Howell
4303 Russell Drive
Austin, Texas 78704

²We understand that the portions of the attorney fee bill you have underlined are the portions you have excised.